

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

SCHAWBEL TECHNOLOGIES LLC,

Plaintiff,

v.

THE HEAT FACTORY USA, INC.,

Defendant.

Civil Action No. 18-CV-10227

SCHAWBEL TECHNOLOGIES LLC’S REQUEST TO FILE REPLY BRIEF

Schawbel Technologies LLC (“Schawbel”) requests leave to file a brief reply to The Heat Factory USA, Inc.’s (“Heat Factory”) Opposition to Schawbel’s Motion to Compel Response to First Set of Interrogatories and First Request for Production of Documents (the “Opposition”) [Docket No. 31].

In the Opposition, Heat Factory argues that Schawbel’s Motion to Compel Response to First Set of Interrogatories and First Request for Production of Documents (the “Motion to Compel”) is no longer necessary because Heat Factory served written responses to Schawbel’s discovery requests before the August 1, 2018 opposition deadline.¹ A reply is necessary to inform the Court that, although written responses were served,² Heat Factory did not produce any documents in response to the requests. Schawbel’s document requests required that responsive documents be produced within 30 days of the June 1, 2018 service date. In response to each of

¹ Heat Factory sent these responses via email at 5:42 p.m. on August 1, 2018, less than 20 minutes before the opposition deadline expired, along with a cover letter indicating service via first class mail on August 1, 2018.

² Schawbel does not hereby waive any right to challenge the sufficiency of the written responses as necessary at a later time.

Schawbel's twenty-one requests for production of documents, Heat Factory responds, without objection, that it "will produce responsive, non-privileged documents in its possession, custody or control, as they are kept in the usual course of business." In its answers to two of Schawbel's interrogatories, Heat Factory also states that it "will produce business records in response to Plaintiff's First Request for Production of Documents from which the answer to this interrogatory may be derived or ascertained." Without actually producing the referenced documents along with the written responses, however, Heat Factory's discovery responses remain incomplete as of 60 days (and counting) after the requests were first served. Schawbel is entitled to an order compelling the immediate production of documents in response to Schawbel's discovery requests.

A reply is also necessary to respond to Heat Factory's suggestion that it was somehow improper for Schawbel to file its Motion to Compel after Heat Factory's counsel filed a motion to withdraw as counsel. The claimed "disagreement" between Heat Factory and its counsel that led to the filing of the motion to withdraw was in no way an issue of Schawbel's making. Heat Factory cannot reasonably have expected Schawbel to delay its own prosecution of its claims to recover over \$2,500,000.00 while Heat Factory and its counsel worked out their "disagreement." Schawbel's counsel informed Heat Factory's counsel of this position during the parties' Rule 37.1 conference. Specifically, Schawbel informed Heat Factory that it would not agree to any delay in the proceedings due to Heat Factory's potential need to engage new counsel. Schawbel's Motion to Compel was entirely separate from Heat Factory's motion to withdraw and Schawbel was entitled to file that Motion in order to start the process required to receive responses to its discovery requests.

For the foregoing reasons, Schawbel Technologies LLC respectfully requests that the Court permit Schawbel to file a reply to Heat Factory's Opposition to the Motion to Compel and, further, that the Court allow the Motion to Compel and order that Heat Factory immediately produce all documents referenced in its written responses.

SCHAWBEL TECHNOLOGIES, LLC

By its attorneys,

/s/ Anthony R. Leone

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Dated: August 3, 2018

Rule 7.1 Certificate

I, Anthony R. Leone, certify that I conferred with Gina Puls, counsel for the Defendant, in an attempt to resolve or narrow the issues raised by this motion.

/s/ Anthony R. Leone

Anthony R. Leone

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CERTIFICATE OF SERVICE

I, Anthony R. Leone, hereby certify that this document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on August 3, 2018.

/s/ Anthony R. Leone

Anthony R. Leone

1